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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff

**OPPOSITION TO IBM'S
EX PARTE MOTION**

Case No. 2:03CV0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

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On January 18, 2005, Magistrate Judge Wells entered an Order Regarding SCO's Renewed Motion to Compel Discovery. Pursuant to Federal Rule of Civil Procedure 72(a), IBM was obligated to file and serve any objections it had to that Order within ten days of its service (by February 2). Rather than submitting proper objections to the Court, and without ever consulting SCO, IBM submitted yesterday (February 1) an Ex Parte Motion asking the Court to suspend the Federal Rules in order (1) to permit IBM until February 11 to file with the Magistrate Judge a "Motion for Reconsideration/Clarification" of her Order and (2) to permit IBM to suspend its obligation to object to this Court "until 10 days after being served with a copy of the Magistrate Judge's order on that motion."

Nowhere do the Federal Rules provide any basis for the relief IBM seeks. IBM's Ex Parte Motion does not merely seek an extension of time to submit objections to this Court under Rule 72(a). Rather, IBM requests this Court's leave for additional time to file a motion for reconsideration/clarification in the Magistrate Court, which will necessitate further briefing and another Court Order, and then to follow that entire process by filing further objections to this Court.

There is no merit to IBM's request to suspend the Federal Rules in order to permit it to delay further its compliance with its basic discovery obligations and this Court's orders. Nor does IBM's Ex Parte Motion even attempt to provide any justification for its request. The discovery that is the subject of Magistrate Judge Wells's Order is basic, predicate discovery that SCO first requested from IBM over a year-and-a-half ago. Much of the discovery was ordered produced by Judge Wells on March 3, 2004, but IBM's non-compliance with that Order forced SCO to file its Renewed Motion to Compel last July. The Court received full briefing on the outstanding discovery issues before it (including over a dozen briefs) and heard extensive

argument from counsel on October 19, 2004. Magistrate Judge Wells's eighteen-page written discovery Order fully delineates the Court's rationale for, and IBM's responsibilities under, that Order.

Judge Wells's Order requires IBM to comply by March 18. By attempting to add additional (and unprovided for) layers of review to this process, IBM seeks to delay further its compliance with the Court's orders and its discovery obligations. IBM's Ex Parte Motion should be denied.

DATED this 2nd day of February, 2005.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Opposition to IBM's Ex Parte Motion was served on Defendant International Business Machines Corporation on the 2d day of February, 2005

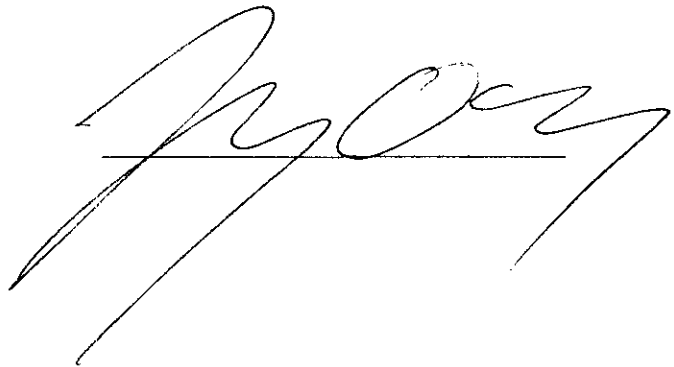
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A handwritten signature in black ink, appearing to read "Rosenberg", is written over a horizontal line.